

UNITED STATES FOREST SERVICE

IBLA 99-105

Decided July 28, 2003

Appeal from a decision of the Alaska State Office, Bureau of Land Management, approving parcel B of amended historical place selection application AA-10751 for interim conveyance pursuant to section 14(h)(1) of the Alaska Native Claims Settlement Act.

Affirmed.

1. Alaska Native Claims Settlement Act: Conveyances:
Cemetery Sites and Historical Places

A BLM decision approving a Native historical place application for conveyance under section 14(h)(1) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1613(h)(1) (2000), and 43 CFR Subpart 2653, will be affirmed on appeal where error in BLM's decision has not been established by a preponderance of the evidence.

Appearances: Maria Lisowski, Esq., Office of the General Counsel, U.S. Department of Agriculture, Juneau, Alaska, for the Forest Service; Joseph D. Darnell, Esq., Office of the Solicitor, Alaska Region, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

The Forest Service, U.S. Department of Agriculture, has appealed an October 27, 1998, decision of the Alaska State Office, Bureau of Land Management (BLM), approving in part and rejecting in part regional selection application AA-10751 filed by Chugach Alaska Corporation (Chugach) ^{1/} pursuant to section 14(h)(1) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C.

^{1/} The Regional Corporation Selection Application was filed under Chugach's former name, Chugach Natives, Inc. § 1613(h)(1) (2000).

On December 18, 1975, pursuant to section 14(h)(1) of ANCSA, Chugach filed historical place selection application AA-10751 for approximately 80 acres in Picturesque Cove along the western shore of the lower Culross Passage in western Prince William Sound, Alaska, in the Chugach National Forest.^{2/} The application was accompanied by a one-page “Statement of Significance” which briefly discussed Russian and American influence on Natives in the Prince William Sound and Kayak Island areas and alluded to sources that “should provide data on area cultural sequences,” as well as the data that could be obtained through archeological survey. The historic place was designated as Culross Passage and is located near the southwesterly end of Culross Passage. As described below, this acreage ultimately would be designated Parcel A.

The Bureau of Indian Affairs (BIA) conducted a field investigation of Parcel A on May 30 and June 8, 1981, the results of which were set forth in a 1984 Field Investigation Report (1984 Report). According to Native elders familiar with the area, the site was used for the fishing, tree bark, and berries it offered, and it contained a smokehouse and tent. (1984 Report at 6.) The site was surveyed in 1981 and found to contain 1.35 acres. No significant cultural remains were found during the site investigation. Because no evidence supporting the site as a Native historical place under the criteria set forth in 43 CFR § 2653 was found, BIA issued a Certificate of Ineligibility as to Parcel A dated June 19, 1984. (1984 Report at p. “B”.)

In 1979, two years before BIA’s investigation, Forest Service archeologist John Mattson located signs of historic human habitation a short distance away^{3/} in the lagoon southwest of Parcel A. Mattson found a copper teakettle, a pile of slate slabs, and a large cable attached to a nearby tree. In August 1983, he assigned Forest Service archeologists Ray DePuydt and Dean Pedersen to test the site. They found historic food tins, a large iron bar, additional cables and wire nails on the surface. DePuydt and Pedersen opened two test pits, which yielded a wire rod, wooden plank fragments, rubberized cloth, glass and ceramic sherds, charcoal and burnt wood, oxidized beach gravels, rusted wire nails, and a buried peat deposit, the upper layer

^{2/} The application sought the SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$, sec. 3, T. 6 N., R. 7 E., Seward Meridian (SM), Alaska.

^{3/} The Forest Service states that Parcel B is located 800 meters, slightly less than half a mile south of the original application area. By letter to the Board dated Dec. 20, 2000, the Forest Service advised of a typographical error at 2 of its Statement of Reasons (SOR), which recited that Parcel B was “80 meters” away from the original application area. The 1994 Report did not state the distance between the two parcels.

of which contained charcoal, wooden fragments, and decomposed bones of salmon and bear. A charcoal sample was carbon dated, indicating the sample could be as old as 1781 or as recent as 1867.^{4/} These findings were set forth in a 1994 Field Investigation Report (1994 Report) at 7-8. The Mattson site, comprising 1.4 acres, later was designated Parcel B.^{5/}

Chugach challenged the determination for Parcel A and expressed interest in adding the Mattson site to application AA-10751 as a separate parcel. In 1992, Chugach identified Parcel A and Parcel B by the Native place-name “Koklohkaq” and submitted photographs that purported to show structural ruins at Parcel A. In August 1992, the BIA ANCSA Office Director and BIA archaeologists Ron Kent, Ted Krieg, and Randy Cooper returned to the area to evaluate Chugach’s evidence regarding Parcel A. They found evidence of a former settlement, but none of the structural ruins depicted in Chugach’s photographs. The team also visited Parcel B, and among other things, determined where the 1983 test pits were located. (1994 Report at 9.)

In May 1993, Kent returned to Parcel B with BIA archaeologists Karen Shemet and Matt O’Leary to formally establish it as Parcel B. The site was surveyed, mapped, and photographed. Kent prepared the 1994 Report and certified the findings contained in it.

On September 15, 1994, BIA issued a Certificate of Eligibility for Parcel B. Chugach amended its application to include Parcel B on October 21, 1994.

On October 27, 1998, BLM approved Parcel B for interim conveyance and rejected Parcel A, and this appeal followed. As grounds for appealing the approval of Parcel B, the Forest Service argues that there is no evidence that an historical event occurred at Parcel B or that it was the subject of sustained historical Native activity. (SOR at 3-4.) According to the Forest Service, “nothing in the [1994] Report distinguishes any activities occurring on Parcel B from the numerous similar seasonal camp sites located within Culross Passage used for hunting, fishing, and trapping activities.” (SOR at 5.) Although the Forest Service concedes that the site was “initially inhabited on a seasonal basis,” it contends that the 1994 Report presents no evidence that any events that occurred at the site “made a significant contribution to Native history.” (SOR at 5.) The Forest Service further argues that the presence of culturally modified trees “does not establish that the site is of particular historical or cultural significance when compared to other similar sites” (SOR at 5), and no

^{4/} Specifically, the sample was dated 126±43 years BP. As BLM explained in its Answer, carbon dating uses 1950 as the reference year: 1950 - (126 plus 43) = 1781, or 1950 - (126 less 43) = 1867. See F. Hole and R. Heizer, *An Introduction to Prehistoric Archaeology* at 223-24 (1969), excerpt attached as Ex. A to BLM’s Answer.

^{5/} Parcel B is in the N½NE¼NW¼, sec. 10, T. 6 N., R. 7 E., SM.

“persons significant in the past of the Chugach Natives” have been identified with the parcel (SOR at 6). It is likewise argued that the 1994 Report “does not indicate how the site is demonstrably likely to yield important information to the prehistory or history of Alaska Natives” (SOR at 6), or that the site was “the location of a Native village or subject to sustained human habitation,” so as to demonstrate “sustained historical activity occurred at the site” (SOR at 7).

In their Answers, BLM and Chugach dispute the Forest Service’s interpretation of the requirements of sec. 14(h)(1) of ANCSA and its implementing regulations at 43 CFR Subpart 2653.

In addition to supporting BLM's decision to convey Koklohaq, however, Chugach asserts that BLM reserved excessive easements on this 1.4-acre site. The easements are for a trail 25 feet wide, a one-acre easement for a Forest Service cabin, although there is a Forest Service cabin within a quarter-mile of the site, and a second one-acre easement for vehicle storage. Chugach contends that these easements “transform the status of this site from a protected historical site into a public use recreational site, subject to the continuing threat of vandalism and looting of artifacts.” Chugach urges the Board affirm the BLM decision to convey Parcel B, but requests a modification of the decision which would eliminate the one-acre easements. (Chugach Answer at 7.)

Section 14(h)(1) of ANCSA, 43 U.S.C. § 1613(h)(1) (2000), authorizes the Secretary of the Interior to “withdraw and convey to [a Native] Regional Corporation fee title to existing * * * historical places.” As defined by 43 CFR 2653.0-5(b), an *historical place* is a

distinguishable tract of land or area upon which occurred a significant Native historical event, which is importantly associated with Native historical or cultural events or persons, or which was subject to sustained historical Native activity, but sustained Native historical activity shall not include hunting, fishing, berry picking, wood gathering, or reindeer husbandry. However, such uses may be considered in the evaluation of the sustained Native historical activity associated with the tract or area.

The regulations further provide:

(d) For purposes of evaluating and determining the eligibility of properties as historical places, the quality of significance in Native history or culture shall be considered to be present in places that possess integrity of location, design, setting, materials, workmanship, feeling and association, and:

(1) That are associated with events that have made a significant contribution to the history of Alaskan Indians, Eskimos or Aleuts, or

(2) That are associated with the lives of persons significant in the past of Alaskan Indians, Eskimos or Aleuts, or

(3) That possess outstanding and demonstrably enduring symbolic value in the traditions and cultural beliefs and practices of Alaskan Indians, Eskimos or Aleuts, or

(4) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or

(5) That have yielded, or are demonstrably likely to yield information important in prehistory or history.

43 CFR 2653.5(d).

As an initial matter, BLM is correct that, once a distinguishable tract of land or area on which a significant Native historical event occurred, or which was subject to sustained historical Native activity has been identified, the site then must qualify under one of the five criteria enumerated in 43 CFR 2653.5(d). Parcel B clearly constitutes a distinguishable tract of land identified and surveyed as such.

It is equally clear that BIA and BLM proceeded from the shared conclusion that Parcel B had been the site of sustained historical Native activity up to the earthquake of 1964, after which it was wholly abandoned. The Forest Service objects to this conclusion by arguing that evidence that Chenega Natives “generally used and occupied this site” does not constitute historical native activity. It claims that there is “no evidence” of “sustained human habitation.” (SOR at 7.) We first observe that this misstates the regulatory requirement, which is not “subject to sustained human habitation,” but “subject to sustained historical Native activity.” 43 CFR 2653.0-5(b). While an applicant cannot demonstrate “sustained historical Native activity” by adducing evidence of only hunting, fishing, berry picking, wood gathering, or reindeer husbandry, we think the artifacts and evidence in this case demonstrate considerably more. The 1994 Report states:

“Koklohmaq” lies within the traditional homeland of the *Caniqermiut*, the westernmost Chugach Eskimo tribe of Prince William Sound proper. Throughout historic times, their principal village was Old Chenega[,] which until the 1964 earthquake[,] was probably the oldest continuously occupied Chugach settlement in the Sound. (Birket-Smith 1953:21; de Laguna 1956:30). From Old Chenega, families dispersed seasonally to a multitude of camps and hamlets located in the region’s numerous bays and coves.

Old Chenega Natives maintained at least ten such camps, including “Koklohmaq”, in the Culross Passage area (Figure 1). Many were occupied habitually since the early nineteenth century, and several included prehistoric components that indicated far more ancient use. Together, the camps comprise a network of cabins and smokehouses well known to families who travelled [sic] in the area (US BIA 1984a). Some were fish camps; others were bases for hunting and trapping in the neighborhood; and still, [sic] others combined both functions at a single locality.

(1994 Report at 5.) This pattern of use continued until 1917, when the Port Nellie Juan Cannery opened, which gradually altered the traditional subsistence lifestyle. When the 1964 earthquake destroyed Old Chenega, the Natives moved to New Chenega 22 kilometers away, and perhaps because of the distance to Culross Passage or the closing of the cannery, “occupation” of the camp ended. However, the site was used by hunters and trappers in other seasons “well into the 1960s.” (1994 Report at 6-7.)

As described in the 1994 Report, the site possesses integrity of location, design, setting, materials, workmanship, feeling and association, although these qualities were compromised by the 1964 earthquake. See 1994 Report at iii, 13-14.

[1] Whether other sites might yield similar information is irrelevant. Each site must qualify on its own merits. Chugach Alaska Corp., 143 IBLA 127, 132 (1998). This case is in stark contrast to the facts in Chugach Alaska Corp., 147 IBLA 73, 79 (1998), for example. The record here establishes Native activity and habitation for a prolonged period of time, generally supported by oral history, evidence of a smokehouse and recovered artifacts. That evidence is hardly inconclusive. Nor is the present case one that involves “considerable uncertainty” as to the situs of Native activity and habitation, see Chugach Alaska Corp., 148 IBLA 65, 70 (1999), or one in which the evidence consists of oral reports without corroborating physical evidence, Chugach Alaska Corp., 148 IBLA 65, 71 (1999). Here, the area has been investigated three times by BIA and Forest Service archaeologists. We think the archaeological record they have assembled for Parcel B, coupled with the undisputed history of Chenega Natives in Culross Passage before the

1964 earthquake, and the compelling evidence of antiquity provided by carbon dating adequately supports the conclusion that “substantial surface and subsurface [cultural] remains * * * clearly document Native occupation from the early nineteenth century through the 1920s.” (1994 Report at 13.) The cultural remains found thus far persuade us that the site has yielded and is demonstrably likely to yield information important in prehistory or history.

We further find that the record adequately supports the conclusion that “[s]ignificance derives from the parcels’ antiquity, their representation in oral history, their research potential for elucidating traditional Native land-use patterns and from their association with important historical developments.” (1994 Report at 15.) As we have observed in the past, it is not required that the precise historical relevance of a particular site be known. Instead, it is sufficient that the site be of “some historical significance.” United States Forest Service, 101 IBLA 38, 44 (1988).

There is therefore no basis for disturbing BIA’s determination that Parcel B is a typical historic Chugach fish camp (1994 Report at 13) that was subject to sustained historical Native habitation and activity, and no basis for rejecting BIA’s conclusion that the site is demonstrably likely to yield information important in prehistory or history. Consequently, BLM’s decision approving Parcel B for interim conveyance will be sustained.

A party challenging BLM’s decision approving an interim conveyance pursuant to an historical place selection application under section 14(h)(1) of ANCSA bears the burden of establishing by a preponderance of the evidence that such decision is in error. Sealaska Corp., 115 IBLA 257, 262 (1990). The Forest Service has not met this burden, and thus BLM’s decision is properly affirmed.

As noted, Chugach also moves the Board to rid the interim conveyance of two one-acre easements. Chugach did not appeal the decision to the extent it included the easements, and accordingly, the issue is not before us. ^{6/}

^{6/} It should be noted that section 17(b) of ANCSA, 43 U.S.C. § 1616(b)(1)(1976), authorizes and directs the Secretary to reserve such public easements across lands selected by Village Corporations and Regional Corporations and at periodic points along the course of major waterways as she determines are reasonably necessary “to guarantee * * * a full right of public use and access for recreation, hunting, transportation, utilities, docks and other important uses.” Regulations implementing this authority with respect to transportation and site easements are found at 43 CFR 43 CFR 2650.4-7(b)(1) and (b)(3). Chugach has neither alleged nor shown that BLM failed to comply applicable regulations in reserving the easements. Easements reserved pursuant to section 17(b) of ANCSA are subject to principles laid down by (continued...)

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

T. Britt Price
Administrative Judge

I concur:

R.W. Mullen
Administrative Judge

^{6/} (...continued)

section 903 of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1633(a) (2000). ANILCA provides that such easements “should be designed so as to minimize their impact on Native life styles” and “should include only such areas as are necessary for the purpose or purposes for which the easement is reserved.” 43 U.S.C. § 1633(a)(1),(2) (2000).